

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DENNIS PETILLO, JR.,

Plaintiff,

v.

DEPARTMENT OF HEALTH,

Defendant.

No. 2:24-cv-2562 AC P

ORDER

Plaintiff is a state inmate who filed this civil rights action pursuant to 42 U.S.C. § 1983 without a lawyer. He has requested leave to proceed without paying the full filing fee for this action, under 28 U.S.C. § 1915. Plaintiff has submitted a declaration showing that he cannot afford to pay the entire filing fee. See 28 U.S.C. § 1915(a)(2). Accordingly, plaintiff's motion to proceed in forma pauperis is granted.<sup>1</sup>

I. Statutory Screening of Prisoner Complaints

The court is required to screen complaints brought by prisoners seeking relief against "a governmental entity or officer or employee of a governmental entity." 28 U.S.C. § 1915A(a). A

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<sup>1</sup> This means that plaintiff is allowed to pay the \$350.00 filing fee in monthly installments that are taken from the inmate's trust account rather than in one lump sum. 28 U.S.C. §§ 1914(a). As part of this order, the prison is required to remove an initial partial filing fee from plaintiff's trust account. See 28 U.S.C. § 1915(b)(1). A separate order directed to CDCR requires monthly payments of twenty percent of the prior month's income to be taken from plaintiff's trust account. These payments will be taken until the \$350 filing fee is paid in full. See 28 U.S.C. § 1915(b)(2).

1 claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v.  
2 Williams, 490 U.S. 319, 325 (1989). The court may dismiss a claim as frivolous if it is based on  
3 an indisputably meritless legal theory or factual contentions that are baseless. Neitzke, 490 U.S.  
4 at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an  
5 arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989).

6 In order to avoid dismissal for failure to state a claim a complaint must contain more than  
7 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause  
8 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,  
9 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory  
10 statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). A claim upon which the  
11 court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A claim has facial  
12 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable  
13 inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at 678. When  
14 considering whether a complaint states a claim, the court must accept the allegations as true,  
15 Erickson v. Pardus, 551 U.S. 89, 93-94 (2007), and construe the complaint in the light most  
16 favorable to the plaintiff, Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

## 17 II. Factual Allegations of the Complaint

18 The complaint is largely unintelligible. ECF No. 8. However, it appears plaintiff is  
19 attempting to allege that he is being tortured (id. at 3-5), there is a plot to kill him (id.), and he has  
20 trouble breathing and needs an oxygen tank (id. at 4). He also makes references to exorcists,  
21 UFOs, extraterrestrials, mind control, witchcraft, and various religions. Id. at 4-5, 8-10. Despite  
22 listing numerous individuals throughout the complaint (id. at 3-5, 7-10), plaintiff has identified  
23 the Department of Health as the only defendant (id. at 2).

## 24 III. Failure to State a Claim

25 Having conducted the screening required by 28 U.S.C. § 1915A, the court finds that the  
26 complaint does not state any valid claims for relief because plaintiff has not identified any proper  
27 defendants or alleged any specific conduct by such defendants. Moreover, to the extent he is  
28 attempting to state claims for relief against the state health department or the California

1 Department of Corrections and Rehabilitation, these entities are immune from suit. See Howlett  
2 v. Rose, 496 U.S. 356, 365 (1990) (the state and arms of the state “are not subject to suit under  
3 § 1983” (citing Will v. Mich. Dep’t of State Police, 491 U.S. 58 (1989))). The court further finds  
4 that, while largely unintelligible, the parts of the complaint that can be deciphered are fantastical  
5 and clearly baseless, with the exception of the allegation that plaintiff has trouble breathing and  
6 needs an oxygen tank, which he is presumably being denied. However, plaintiff does not provide  
7 any facts regarding the denial of an oxygen tank. Because of these defects, the court will not  
8 order the complaint to be served.

9 Although the complaint appears largely frivolous, because it appears that plaintiff may be  
10 able to state a cognizable claim with respect to the denial of an oxygen tank, he will be given an  
11 opportunity to file an amended complaint. In deciding whether to file an amended complaint,  
12 plaintiff is provided with the relevant legal standards governing his potential claims for relief  
13 which are attached to this order. See Attachment A.

#### 14 IV. Legal Standards Governing Amended Complaints

15 If plaintiff chooses to file an amended complaint, he must demonstrate how the conditions  
16 about which he complains resulted in a deprivation of his constitutional rights. Rizzo v. Goode,  
17 423 U.S. 362, 370-71 (1976). The complaint must also allege in specific terms how each named  
18 defendant is involved. Arnold v. Int’l Bus. Machs. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981).  
19 There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or  
20 connection between a defendant’s actions and the claimed deprivation. Id.; Johnson v. Duffy,  
21 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, “[v]ague and conclusory allegations of official  
22 participation in civil rights violations are not sufficient.” Ivey v. Bd. of Regents, 673 F.2d 266,  
23 268 (9th Cir. 1982) (citations omitted).

24 Plaintiff is also informed that the court cannot refer to a prior pleading in order to make  
25 his amended complaint complete. Local Rule 220 requires that an amended complaint be  
26 complete in itself without reference to any prior pleading. This is because, as a general rule, an  
27 amended complaint supersedes any prior complaints. Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.  
28 1967) (citations omitted). Once plaintiff files an amended complaint, any previous complaint no

longer serves any function in the case. Therefore, in an amended complaint, as in an original complaint, each claim and the involvement of each defendant must be sufficiently alleged.

V. Plain Language Summary of this Order for Party Proceeding Without a Lawyer

Your complaint will not be served because the facts alleged are not enough to state a claim. You are being given a chance to fix these problems by filing an amended complaint. If you file an amended complaint, pay particular attention to the legal standards attached to this order. Be sure to provide facts that show exactly what each defendant did to violate your rights.

**Any claims and information not in the amended complaint will not be considered.**

CONCLUSION

In accordance with the above, IT IS HEREBY ORDERED that:

1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 9) is GRANTED.

2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the appropriate agency filed concurrently herewith.

3. Plaintiff's complaint fails to state a claim upon which relief may be granted, see 28 U.S.C. § 1915A, and will not be served.

4. Within thirty days from the date of service of this order, plaintiff may file an amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must bear the docket number assigned this case and must be labeled "First Amended Complaint."

5. Failure to file an amended complaint in accordance with this order will result in a recommendation that this action be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

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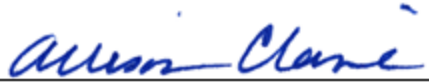
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6. The Clerk of the Court is directed to send plaintiff a copy of the prisoner complaint form used in this district.

DATED: November 18, 2024

  
ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE

Attachment A

This Attachment provides, for informational purposes only, the legal standards that may apply to your claims for relief. Pay particular attention to these standards if you choose to file an amended complaint.

I. Personal Involvement

The civil rights statute requires that there be an actual connection or link between the actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See Monell v. Department of Social Services, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a constitutional right, within the meaning of section 1983, if he does an affirmative act, participates in another’s affirmative acts or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (citation omitted). In order to state a claim for relief under section 1983, plaintiff must link each named defendant with some affirmative act or omission that demonstrates a violation of plaintiff’s federal rights.

II. Deliberate Indifference

Denial or delay of medical care for a prisoner’s serious medical needs may constitute a violation of the prisoner’s Eighth and Fourteenth Amendment rights. Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). An individual is liable for such a violation only when the individual is deliberately indifferent to a prisoner’s serious medical needs. Id.; see Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006); Hallett v. Morgan, 296 F.3d 732, 744 (9th Cir. 2002); Lopez v. Smith, 203 F.3d 1122, 1131-32 (9th Cir. 2000).

In the Ninth Circuit, the test for deliberate indifference consists of two parts. Jett, 439 F.3d at 1096, citing McGuckin v. Smith, 974 F.2d 1050 (9th Cir. 1991), overruled on other grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc). First, the plaintiff must show a “serious medical need” by demonstrating that “failure to treat a prisoner’s condition could result in further significant injury or the ‘unnecessary and wanton infliction of pain.’” Id., citing Estelle, 429 U.S. at 104. “Examples of serious medical needs include ‘[t]he

1 existence of an injury that a reasonable doctor or patient would find important and worthy of  
2 comment or treatment; the presence of a medical condition that significantly affects an  
3 individual's daily activities; or the existence of chronic and substantial pain.” Lopez, 203 F. 3d  
4 at 1131-1132, citing McGuckin, 974 F.2d at 1059-60.

5 Second, the plaintiff must show the defendant's response to the need was deliberately  
6 indifferent. Jett, 439 F.3d at 1096. This second prong is satisfied by showing (a) a purposeful act  
7 or failure to respond to a prisoner's pain or possible medical need and (b) harm caused by the  
8 indifference. Id. Under this standard, the prison official must not only “be aware of facts from  
9 which the inference could be drawn that a substantial risk of serious harm exists,” but that person  
10 “must also draw the inference.” Farmer v. Brennan, 511 U.S. 825, 837 (1994). This “subjective  
11 approach” focuses only “on what a defendant's mental attitude actually was.” Id. at 839. A  
12 showing of merely negligent medical care is not enough to establish a constitutional violation.  
13 Frost v. Agnos, 152 F.3d 1124, 1130 (9th Cir. 1998), citing Estelle, 429 U.S. at 105-106. A  
14 difference of opinion about the proper course of treatment is not deliberate indifference, nor does  
15 a dispute between a prisoner and prison officials over the necessity for or extent of medical  
16 treatment amount to a constitutional violation. See, e.g., Toguchi v. Chung, 391 F.3d 1051, 1058  
17 (9th Cir. 2004); Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989). Furthermore, mere delay of  
18 medical treatment, “without more, is insufficient to state a claim of deliberate medical  
19 indifference.” Shapley v. Nev. Bd. of State Prison Comm'rs, 766 F.2d 404, 407 (9th Cir. 1985).  
20 Where a prisoner alleges that delay of medical treatment evinces deliberate indifference, the  
21 prisoner must show that the delay caused “significant harm and that Defendants should have  
22 known this to be the case.” Hallett, 296 F.3d at 745-46; see McGuckin, 974 F.2d at 1060.